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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

I had originally submitted comments from Hometown Online, Inc., in regards to the above referenced docket, and would like to replace them with the attached.

I have included additional details about our primary concern and would like to have them included if possible.

I would appreciate it if you could let me know if this replacement could be accomplished.

Thank You

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RESPONSE TO NOTICE OF INQUIRY INTO THE STATUS OF COMPETITION IN THE MARKET FOR THE DELIVERY OF VIDEO PROGRAMMING

Hometown Online, Inc., a wholly owned subsidiary of Warwick Valley Telephone Company, has launched a competitive Digital Video service using VDSL technology, which delivers the Digital Video signals over existing twisted pair, copper telephone lines. The experience gained over the last year in dealing with programming content providers, regulatory agencies, and cross-ownership issues with incumbent Cable TV operators have clearly demonstrated that intervention at the Federal level is needed to truly open the markets to competition.

The 1st example is the acquisition of a contract to carry the MSG (Madison Square Garden), and Fox Sports NY networks. Cablevision, which is the incumbent Cable TV operator in West Milford, NJ, Village and Town of Warwick, and the Village of Florida, also is a principal owner of both MSG, and of Fox Sports NY. The main programming carried on the MSG network is the NY Rangers hockey, the NY Knick's basketball, and ***previously*** was the majority of the NY Yankees baseball games. Cablevision lost the broadcast rights to the Yankees games to the newly formed YES network, and refused to reduce the price for the MSG service, even though 1/3 of the valuable programming content was gone. They also mandate that the service be carried on a tier with at least 90% penetration.

The 2nd example is the Lifetime TV Network, which is jointly owned by Disney and the Hearst companies. In order to launch the service, using the VDSL technology, a surcharge of $.25 per subscriber per month was imposed due to the fact that the signal would be "digitized" at the Head End receive site, prior to delivering it to the subscriber. This surcharge was non-negotiable, and is not required for a classic Cable TV system transporting the signal using traditional Coaxial cables, or even HFC (Hybrid Fiber Coax) technology, where the signal is "digitized" and converted to light energy prior to being received at a neighborhood fiber optic node and converted back to an RF signal, using standard EIA channels for transport to the home.

The 3rd example is the Weather Channel, which has a feature called the Weather Star, which allows for local forecasts, emergency alerts and local weather radar every 10 minutes. This is a very big selling feature for the incumbent Cable TV operator, and in order to be competitive, new entrants into the marketplace should also have access to this equipment. The reasons for denying access to this equipment is that the Weather Star units and software are solely owned by the Weather Channel, and they are developing a new Digital product that would become available later this year. These new Digital units would be given to the largest Cable TV operators 1st and eventually the older, analog Weather star unit would be freed up and may be made available to smaller operators. The new features of the Digital units would continue to make the incumbent Cable TV operator more competitive by having a more sophisticated Weather forecasting product.

The 4th example is HSN (Home Shopping Network). The service had been initially launched on the system, with the assumption that commissions would be paid on sales resulting from subscribers viewing the channel, which has become a standard of the industry for shopping channels. HSN decided that commissions would not be paid on purchases by our subscribers strictly due to the VDSL technology being used to deliver the service, even though QVC shopping channel, which is also being carried on the system, has been paying commissions on sales. The HSN service has been subsequently removed form the channel lineup due to this policy decision.

The other major barrier to entering the competitive marketplace is the unwillingness of some State regulators to recognize that the rules in place for traditional Cable TV systems cannot be evenly applied to a LEC (Local Exchange Carrier), attempting to utilize existing telephone infrastructure to distribute Digital Video signals.

The 1st example is the attempt by the NY PSC (Public Service Commission) to mandate full compliance with a Line Extension Policy that was developed over 20 years ago with the intent of providing a mechanism for wiring the more sparsely populated areas of the state. The incumbent Cable TV operators have used this line extension formula to wire the majority of the State, therefore the main reason for adopting this policy, which was to make sure that virtually all residents of NY state had access to some form of multi-channel video services, has been satisfied. The LEC, using the VDSL technology should not be forced to adopt this formula, as it will tremendously increase the cost per subscriber to deliver the service. The distance limitation of the VDSL service over typical twisted pair copper lines is approximately 4100 feet from a Host Central Office or Remote OPM (Outside Plant Module). This limitation leaves "dark Areas" within municipalities that cannot be served without a large investment in additional fiber optic transport and additional DLC's (Digital Loop Carriers). The decision to build out those dark areas should be a business decision by the competitor, who is the 3rd entrant into the marketplace (DBS is the 2nd), based upon a successful launch in the Primary Service Areas, not a mandate by the PSC as a response to a policy that no longer fits the marketplace, and is anti-competitive in nature. If this policy remains in place, the business plan may no longer be viable for the average LEC, and may drive potential lenders away due to extremely long pay back periods, if at all. Small telephone companies contemplating entering the video business will probably make investments in other areas, and the big loser will ultimately be the consumer.

The 2nd example of regulatory anti-competitive behavior is the delaying tactics employed by the NY PSC staff in the approval process of a Cable TV franchise with a LEC. A comparison of the competitive-friendly nature of the BPU in NJ will demonstrate:

- Vernon, NJ—applied 10/01 for franchise—received full BPU approval 3/02 **(5 months)**
- West Milford, NJ—applied 10/01for franchise—received full BPU approval 6/02 **(8 months)**
- Warwick NY—applied 5/01 for franchise—received conditional PSC approval 6/02 **(13 months)**

The major difference between NY and NJ is that NJ has taken a positive stance in regards to promoting competition in the Video marketplace, whereas NY has taken a protectionist stance, which appears that they are more interested in protecting the interests of the incumbent Cable TV operator, as opposed to looking out for the interests of the consumer that are the end users of the product.